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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/760,958	01/16/2001	Gilbert Dominguez	10323-9004-00	5489

23409 7590 08/02/2002

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EXAMINER
NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
3653	5

DATE MAILED: 08/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/760958	Dominguez
Examiner	**Art Unit**
Tuan Nguyen	3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 1/16/01

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-23 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideratio

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-23 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some* c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15)☒ Notice of References Cited (PTO-892)

16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

17)☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

18)☐ Interview Summary (PTO-413) Paper No(s). _____

19)☐ Notice of Informal Patent Application (PTO-152)

20)☐ Other:

DETAILED ACTION

1. Claims 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, lines 4, 7, 8 and 9, the phrase "capable of" is vague and indefinite since it only points out what the invention is "capable" of accomplishing, rather than what it actually does.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 15 and 18-23 are rejected under 35 U.S.C. 102(a) as being anticipated by Jones et al..

Jones et al. disclose a method of sorting a plurality of items by destination comprising the steps of defining a number of locations 12 where each location is a position for a container; creating a scheme of destinations by using a control system 16; reading a destination code (zip code) from each items (column 4, lines 15-23); and determining whether the destination code is assigned a location. If the destination code is assigned a location, loading the item in a container at the assigned location by using receptacles 4 and a conveyor 6. If the destination code is not assigned a location, determining whether to assign the destination code a location based on

whether the destination code is in a scheme of destinations and the projected or historical number of items having the same destination code (abstract, lines 7-15).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al. in view of Okada et al..

Jones et al. have been discussed in paragraph 3 above and a system performs the same method in paragraph 3. However, Jones et al. do not have a speed of loading rating.

Okada et al. disclose a method and a system of sorting a plurality of items by destination comprising a plurality of locations 16, 17 and 18; reading 13 a destination code from each items;

and assigning each location a speed of loading rating 15 and 30 which represents the time needed to move from a position detector 15 to the locations 16, 17 and 18.

It would have been obvious to one skill in the art to modify the method and a system of Jones et al. to have a speed of loading rating as taught by Okada et al. to prevent the items being inadvertently diverted to incorrect locations (Okada et al., column 3, lines 30-60).

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tilles is cited to show other pertinent art.

8. Any inquiry concerning this communication should be directed to Examiner Tuan Nguyen at telephone number 308-3664.

Tuan N Nguyen

TUAN N. NGUYEN
PRIMARY EXAMINER

7/29/02

tnn,

July 29, 2002.